

FILED

NANCY J. MARVEL
Regional Counsel

2005 APR 21 PM 1:43

DAVID H. KIM
Assistant Regional Counsel
U. S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3882

U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:

Pang & Son Distribution, L.L.C.,

Respondent

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Docket No. FIFRA-9-2004-0023

CONSENT AGREEMENT
AND FINAL ORDER

I. CONSENT AGREEMENT

Complainant, the Director of the Cross Media Division, United States Environmental Protection Agency, Region IX ("EPA Region IX"), and Respondent, Pang & Son Distribution, L.L.C. ("Respondent") agree to settle this case initiated under the Federal Insecticide, Fungicide, and Rodenticide Act (the "Act"), as amended, 7 U.S.C. §§ 136 et seq., and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY

1. EPA initiated this civil administrative proceeding for the assessment of a civil penalty under the Act pursuant to section 14(a) of the Act, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for

Hearing ("Complaint") against Respondent on September 29, 2004.

2. The Complaint alleges that Respondent violated section 12(a)(1)(A) and 12(a)(1)(E) of the Act, 7 U.S.C. § 136j(a)(1)(A), 136j(a)(1)(E), by selling and distributing unregistered and mislabeled/misbranded pesticides.
3. EPA Region IX and Respondent have agreed to resolve this civil administrative proceeding arising under the Act by executing this CAFO.

B. RESPONDENT'S ADMISSIONS

4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

5. Respondent agrees to the assessment of a penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) as final settlement of the civil claims against Respondent arising under the Act as alleged in the Complaint.
6. Respondent shall pay the assessed penalty plus interest according to the terms of this CAFO and Exhibit 1, attached hereto, which specifies an installment payment plan and interest schedule. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt

requested, to the following address:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

7. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
8. If Respondent fails to pay the civil administrative penalty by the deadlines specified in Exhibit 1, then Respondent shall pay to EPA the remaining balance of the civil administrative penalty set forth in Paragraph 5 plus FIVE THOUSAND DOLLARS (\$5,000), which shall be immediately due and payable. In addition, failure to pay the civil administrative penalty within 30 days of the effective date of this CAFO may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the

Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadlines specified in Exhibit 1. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be

based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RETENTION OF RIGHTS

9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Complaint.
10. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

E. ATTORNEYS' FEES AND COSTS

11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

F. EFFECTIVE DATE


12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

G. BINDING EFFECT

13. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
14. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.


FOR RESPONDENT PANG & SON DISTRIBUTION, L.L.C.:

3/15/04
DATE


By: **DAVID PAN**
Title: **MANAGER**
Address: **1414 ALEXANDER ST #201**
HAWAII 96822

FOR COMPLAINANT EPA REGION IX:

4/20/05
DATE


Enrique Manzanilla
Director
Cross Media Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA Region IX and Pang & Son Distribution, L.L.C., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2004-0023) be entered, and Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) plus interest in accordance with the terms set forth in the Consent Agreement.

4/21/05

DATE



JOANNA DELUCIA
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

EXHIBIT 1

**INSTALLMENT PAYMENT AND INTEREST SCHEDULE
DOCKET NO. FIFRA-9-2004-0023**

Principal	Days	Interest (1% Per Annum)	Principal	Installment Payment
\$10,000	30	\$8.33	\$2,500.00	\$2,508.33
\$7,500	90	\$20.85	\$2,500.00	\$2,520.85
\$5,000	120	\$18.09	\$2,500.00	\$2,518.09
\$2,500	120	\$6.97	\$2,500.00	\$2,506.97
Totals		\$54.24	\$10,000.00	\$10,054.24

**1st Installment: \$2,508.33 (Due within 30 days of the effective date of the
Consent Agreement and Final Order)**

**2nd Installment: \$2,525.85 (Due within 90 days after the deadline for the first
installment payment)**

**3rd Installment: \$2,518.09 (Due within 120 days after the deadline for the
second installment payment)**

**4th Installment: \$2,506.97 (Due within 120 days after the deadline for the
third installment payment)**

Total Payment: \$10,054.24

CERTIFICATION OF SERVICE

I certify that the original and the foregoing Consent Agreement and Final Order in the matter of **Pang and Son Distribution, L.L.C., Docket Number FIFRA-9-2004-0023**, has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

David Pang
Pang & Son Distribution, L.L.C.
1414 Alexander Street, #201
Honolulu, Hawaii 96822

Certified Mail No.:
7001 0302 0002 4540 6857

and

Dirk Julander, Esq.
Julander Brown & Bollard
Two Park Plaza, Suite 450
Irvine, California 92614

First Class Mail

Date: April 21, 2005

Danielle E. Carr

Danielle E. Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
OFF CIA USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To <i>David Pang</i>	
Street, Apt. No., or PO Box No. <i>1414 Alexander St. Apt. #201</i>	
City, State, ZIP+4 <i>Honolulu, HI 96822</i>	
PS Form 3800, January 2001 See Reverse for Instructions	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RECEIPT NO.: 7001 0320 0002 4540 6857

Date: APR 21 2005

David Pang
Pang and Son Distribution, L.L.C.
1414 Alexander Street, Apt. #201
Honolulu, HI 96822

Re: Federal Insecticide, Fungicide, and Rodenticide Act
Consent Agreement and Final Order
Docket No. FIFRA-09-2004-0023

Dear Mr. Pang:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Pang and Son Distribution, L.L.C. The terms of the CAFO require the payment of \$10,054.24 to be received by the EPA in accordance with the payment schedule (see Exhibit 1 of the CAFO).

If you have any questions, please contact Jason Gerdes, U.S. Environmental Protection Agency Region IX, Pesticides Office (CMD-5), 75 Hawthorne Street, San Francisco, California 94105. Mr. Gerdes can be reached by telephone at (415) 947-4221.

Sincerely,

Enrique Manzanilla, Director
Cross Media Division

Enclosures

cc: Marlene Miller, California Department of Pesticide Regulation
Robert Boesch, Hawaii Department of Agriculture